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In re Application of
Umebara et al.
Application No.: 10/587,246 (11/742,676)
PCT No.: PCT/JP2005/000825
Int'l Filing Date: 24 January 2005
Priority Date: 27 January 2004
Attorney Docket No.: 4600-0124PUS1
For: Plasma Exchange Waste Liquid Purification
And Circulation Dialysis Apparatus

DECISION

This is in response to the renewed petition under 37 CFR 1.182 filed on 30 November 2007 and directed to application no. 11/742,676, which requests that documents submitted in 11/742,676 be placed into the instant application, no. 10/587,246.

DISCUSSION

In a Decision mailed on 01 October 2007 (and addressed to 11/742,676), the correspondence filed on 06 July 2007 was treated as a petition under 37 CFR 1.182 and dismissed, without prejudice, because

Petitioner has not unambiguously described the relief sought. Specifically, petitioner variously suggests that the declaration was intended to be filed in application 10/582,246 or 10/587,246, but does not request that the declaration (or any of the correspondence filed on 01 May 2007) be placed into one of those applications. Instead, petitioner merely urges that the declaration and response "should have been" filed in 10/587,246 (or perhaps 10/582,246) but requests only that they "be removed from the above-identified application." Thus, it is uncertain if petitioner is affirmatively seeking incorporation into another application (whether 10/582,246 or 10/587,246) of the correspondence placed into the instant application, or merely removal of papers from the instant case. Clarification is required.

Petitioner has not clearly defined the manner in which the discrepancy described in the petition arose. Though petitioner states that he "has first hand knowledge of the facts associated with the present situation," it is not clear that he was the individual who committed the "clerical error." If not, a statement from the appropriate person would be appropriate. Also, it is not clear exactly what "clerical error" occurred. For instance, was the error made at the point of the selection of options while electronically filing the correspondence, or did applicants mistakenly decide to file the papers into a new application ("duplicate application 11/742,676 was intended to be...")? Petitioner should more clearly define the nature and timing of the "clerical error," identify who committed the error, and provide a statement by that individual.

In response, petitioner more clearly explains that, on 01 May 2007, applicants attempted to e-file documents into the instant application in response to a Notification of Missing Requirements mailed on 09 April 2007. However, due to what is described as an inadvertent error on the part of a secretary who is no longer in counsel's employ, the documents in question were instead filed as a "new application" which was assigned application no. 11/742,676. Accordingly, "petitioner requests that all correspondence filed on May 1, 2007, which the USPTO associated with new Application No. 11/742,676, be removed from said file and incorporated into Application No. 10/587,246, as originally intended. Petitioner has expressly abandoned Application No. 11/742,676." Based on the totality of the circumstances presented, it would be appropriate to grant the requested relief. Accordingly, copies of the correspondence in question (including a declaration document, a Response to Notification of Defective Response, a copy of the Notification of Defective Response mailed on 09 April 2007, as well as the associated Electronic Acknowledgement Receipt) from 11/742,676 are being placed into the instant application, no. 10/587,246. All further correspondence with respect to this matter should be directed to 10/587,246.

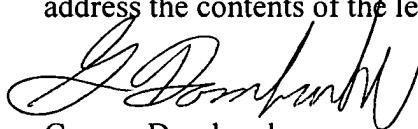
It is noted that the declaration filed on 01 May 2007 nominates an inventor (Mutsuo SASAKI) in place of "Sasaki mutsuo" nominated in the published international application. In that this is clearly more than a mere typographic error or phonetic misspelling of applicants' name (because of the change in the order of the names), a proper petition (under 37 CFR 1.182) is required to resolve this discrepancy. *See* MPEP 605.04(b).

CONCLUSION

The petition is **GRANTED** to the extent noted above.

Petitioner is required to file a proper response (i.e., either a new oath or declaration compliant with 37 CFR 1.497(a) and (b) or else a grantable petition to accept the declaration as filed on 01 May 2007 despite the discrepancy noted above) within **ONE (1) MONTH** of the mailing date of this Decision. Extensions of time under 37 CFR 1.136(a) are **NOT** available. Failure to timely reply will result in **ABANDONMENT**.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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